



# PETITION FOR RULE MAKING

August 30, 2004

Ms. Marlene H. Dortch  
Secretary of the Federal Communications Commission (FCC)  
445 12<sup>th</sup> Street SouthWest  
Washington, D.C. 20554

Dear Secretary Dortch;

First, let me congratulate your team for the very informational website that I have visited. I found all the information that I needed in order to make an important decision to launch my PETITION FOR RULE MAKING .

I am looking to change the current FCC regulation and America's Capabilities in order to protect her CHILDREN from being exposed to Obscenity, Indecency and Profanity via program broadcasts over the AM/FM radio technology, air waves and hardware systems.

I am writing you today because I feel that the UNITED STATES FEDERAL COURT has made a gross oversight in their policies regarding the rights of Children who are between the fragile ages of first being able to hear, think and talk and Young Adults or Teenagers, not excluding retarded citizens that are usually dependants for their whole lifetimes. These children who are not able to discern between right and wrong behavior, sexual offenses, human values, improper language, illegal activity, racial tones and ethics may often be unable to clearly communicate through written means as well.

They often do not have access to this website or the understanding about how to lodge a complaint to the FCC or the U.S. Government or Court System. They also do not know what is in basis a complaint because they have no understanding on the matter in the first place. Therefore, I feel that I am speaking for the majority of these CHILDREN and their right-minded parents or guardians as I lodge this petition. I also represent my own son and young relatives, in proposing the highly needed review and change to the current system of laws that has neglected to protect these innocent human

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beings from becoming corrupt and offended in their lives today and for quite some time now.

Please take a moment and read your current policy that I have partly enclosed below. Please note that you need to think like a parent or guardian of a child, or an adult, or an attorney as you read this policy.

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## **Obscenity, Indecency, & Profanity**

**It's against the Law!**

It is a violation of federal law to broadcast obscene programming at any time. It is also a violation of federal law to broadcast indecent programming during certain hours. Congress has given the Federal Communications Commission (FCC) the responsibility for administratively enforcing the law that governs these types of broadcasts. The Commission may revoke a station license, impose a monetary forfeiture, withhold or place conditions on the renewal of a broadcast license, or issue a warning, for the broadcast of obscene or indecent material.

**Obscene Broadcasts are prohibited at all Times**

Obscene speech is not protected by the First Amendment and cannot be broadcast at any time. To be obscene, material must meet a three-prong test:

- \* An average person, applying contemporary community standards, must find that the material, as a whole, appeals to the prurient interest;
- \* The material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law; and

**\*The material, taken as a whole, must lack serious literary, artistic, political, or scientific value.**

### **Indecent Broadcast Restrictions**

**The FCC has defined broadcast indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community broadcast standards for the broadcast medium,**

**sexual or excretory organs or activities." Indecent programming contains patently offensive sexual or excretory references that do not rise to the level of obscenity.**

**Indecent programming may, however, be restricted in order to avoid its broadcast during times of the day when there is a reasonable risk that CHILDREN may be in the audience.**

**Consistent with a federal statute and federal court decisions interpreting the indecency statute, the Commission adopted a rule pursuant to which broadcasts -- both on television and radio -- that fit within the indecency definition and that are aired between 6:00 a.m. and 10:00 p.m. are subject to indecency enforcement action.**

### **Profane Broadcast Restrictions**

**Profane material is defined as including language that denotes certain of those personally reviling epithets naturally tending to provoke violent resentment or denoting language so grossly offensive to members of the public who actually hear it as to amount to a nuisance.**

**Like indecency, profane speech is prohibited on broadcast radio and television between 6am and 10pm.**

### **First Amendment and Obscenity/Indecency**

Expressions of views that do not involve a "clear and present danger of serious substantive evil" come under the protection of the Constitution, which guarantees freedom of speech and freedom of the press. The Communications Act prohibits the FCC from censoring broadcast material, in most cases, and from making any regulation that would interfere with freedom of speech. According to an FCC opinion on this subject, "the public interest is best served by permitting free \_expression of views." This principle ensures that the most diverse and opposing opinions will be expressed, even though some may be highly offensive. The Courts have said that indecent material is protected by the First Amendment to the Constitution and **cannot be banned entirely**. Nonetheless, the FCC has taken numerous enforcement actions against broadcast stations for violations of the restrictions on broadcast indecency.

#### **Enforcement of Indecent Broadcast Restrictions**

Enforcement actions in this area are based on documented complaints received from the public about indecent or obscene broadcasting. The FCC's staff reviews each complaint to determine whether it has sufficient information to suggest that there has been a violation of the obscenity or indecency laws. If it appears that a violation may have occurred, the staff will start an investigation by sending a letter of inquiry to the broadcast station. If a complaint does not contain information sufficient to determine that a violation may have occurred, the complaint will be dismissed. In such a case, the complainant has the option of re-filing the complaint with additional information, filing a petition for reconsideration of the staff action, or filing an application for review (appeal) to the full Commission. If the facts and information contained in the complaint suggest that a violation did not occur, then the complaint will be denied. In that situation, the complainant has the option of filing a petition for reconsideration of the staff action or an appeal to the full Commission.

## Context

**In making indecency determinations, context is key! The FCC staff must analyze what was actually said during the broadcast, the meaning of what was said, and the context in which it was stated.**

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**This text calls out the fact that it is a crime to expose CHILDREN to this form of abuse. The current policy also requires a registered complaint from a person able to comprehend and communicate effectively in order to execute a complaint through the FCC regarding Obscenity, Indecency, & Profanity.**

**Now comes the proposed change that needs to happen immediately as there is an emergency on America's airwaves today, right now as the children listen with no way for the technology in a AM/FM radio broadcast to have the unwanted abuse locked out or blocked out of their tuning devices.**

**Walkmans, hand held radios, alarm clocks with radios, automotive radios, home stereos and all other radios in America have no way for a parent or guardian to screen out this form of abuse from their children when not with them and the devices.**

**It is not feasible to take away the devices because children attend schools and have friends that all have access to these devices. It is a common form of communication and education to listen to a radio. Music is endorsed by schools and not all families can afford to procure CD players or private listening devices that do not inherit the AM/FM bands within.**

**It is also impossible to know at any time which stations SHOCK JOCKS and other DJ's today are aired on and which hours as many times shows are**

taped and broadcast during your current time frames in the law. And furthermore, as you fine or execute the law they resurface on another station, or find a new way to twist words or suggestive phrases and background noises so as to again avoid the law and offend America's CHILDREN. They also pay the fines as the ratings go up over the liberal controversy that transpires, including debating the First Amendment and Free Speech, further fueling their business.

Sadly, most shows that Shock Jocks launch their abuse from are in the morning hours when children are off to school, waking up and listening to the Radio while they prepare for school, commuting or at recess. Certain songs also have bad lyrics and fall under the same category of unwanted abuse to these CHILDREN.

Furthermore, the Am/FM devices and technology are outdated and do not carry this form of security in the devices. Although America has been plagued with this form of abuse prior to the modern age of technology, it was governed by the current set of regulations highlighted above. This system of monitoring and fining is costly and outdated and in my opinion is not a form of regulation but enactment.

Take a look at the expense to America's taxpayers and Court system for governing this moving target and one could predict that the current system is not working and it is expensive on both ends of this so-called form of Free Speech. It is not "free" as America pays for it everyday with taxes and expense for unwanted side affects to be mitigated;

violence,adverse mental & emotional & physical health,psychological impacts,bad behavior, sexual harassment and orientation, criminal activity like underage drinking and illegal substance abuse and sexual activities promoted by pornography and the adult liberal world, Anti-government discussion in classrooms and also spiritual growth just to name a few general areas of impact to our CHILDREN.

Our courts are being abused as well by this constant struggle with the lawyers of Corporate Entertainment and their promoters. We now know the

**long term damage our country has been faced with as a result of tolerating these perverts and abusers on our CHILDREN's radios. It is time for CHANGE.**

**With the advent of the Internet and Cable industry this form of programming can now exist on the appropriate technology platform where lock out and block out type filters are available for parents and guardians in order to safeguard their CHILDREN.**

**Therefore, I do not believe that Freedom of Speech will be completely denied to this form of Adult entertainment. Internet web sites can provide sound direct to a computer as well as a cable station, as this happens today. New hand held devices also can receive the Internet communications. Modern Technology communication devices have allowed us to revisit the legislature in place. And even if a radio was invented that could screen out stations, it would take years and money for this form of technology to hit the streets of America. Why let this damage to our CHILDREN's lives and minds continue?**

**I am calling for a BAN to be placed on this form of abuse on AM/FM Radio Programs and stations today. The Courts have said that indecent material is protected by the First Amendment to the Constitution and cannot be banned entirely. And this would still be the case except that the cable and Internet industry would be the new platform for this form of "Free Speech".**

**Oliver Wendall Holmes tried to justify the fact that no matter what the laws dictate it will not stop someone from falsely yelling fire in a public theater. I am Mark doCurren, a parent and an American citizen. I am not a Supreme Court justice. I will say that it is possible to not allow and it is justified to completely ban Obscenity, Indecency, & Profanity on the Am/Fm Radio frequencies today. There are other theaters for this form of adult entertainment to exist without taking away the rights of our children and mentally handicapped individuals to grow and comprehend the world and enjoy music and information and learn the true strength and value of Free Speech in America. Let these perverts and abusers yell FIRE in their own Theater not our CHILDREN's.**

**Imagine if the radio was tuned to an FM Shock Jock before the Supreme Court's Staff in a coffee room. It would be a form of Sexual Harassment under Federal law today. And we are allowing these AM/FM Stations to pump this trash into our CHILDREN's ears and minds in the meanwhile?**

**It is time to move this form of entertainment and information to the proper theater or forum. It is time to give AMERICA back her radio clean and filtered from this form of corruption and abuse. I will not ask a child or a mentally handicapped individual to compile the necessary data to lodge a Complaint. I will be performing a crime in my opinion to have them exposed to this form of Obscenity, Indecency, & Profanity at all. I will ask that the Supreme Court turn on their own radios and listen in to the nature of the beast. This is the evidence that the CHILDREN of America are submitting today. Perhaps there are tapes that exist that have been filed previously. I refuse to help increase America's debt by bringing more lawyers or suits to the table. It is time for the COURT to make a decision that is fair to both parties and to stop dancing with the DEVIL. There are too many stations, too many times and too many companies and call letters to list that come under this complaint.**

**Thank you for your time today. May GOD bless you for your assistance and wisdom with regards to this matter.**

**Respectfully Submitted,**

A handwritten signature in black ink, reading "Mark A. doCurral". The signature is fluid and cursive, with the first name "Mark" and last name "doCurral" clearly legible.

**Mark A. doCurral  
170 Mediterranean Drive  
Unit 63  
Weymouth, MA 02188**

**United States Citizen  
Concerned Parent**